

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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SIRIUS XM RADIO INC.,

Plaintiff,

v.

SOUNDEXCHANGE, INC. and AMERICAN
ASSOCIATION OF INDEPENDENT MUSIC,

Defendants.
-----X

Case No. 12-cv-02259 (TPG)

USDC SDNY
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DATE FILED: <u>1/31/2013</u>

[PROPOSED] STIPULATION OF AGREED SETTLEMENT AND DISMISSAL

WHEREAS, Plaintiff, Sirius XM Radio Inc. ("Sirius XM"), has filed a Complaint against Defendants SoundExchange, Inc. ("SoundExchange") and American Association of Independent Music's ("A2IM") alleging that Defendants have engaged in a *per se* unlawful agreement and group boycott in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, monopolization and conspiracy to monopolize in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, and tortious interference;

WHEREAS, Defendants filed motions to dismiss the Complaint for failure to state a claim and a decision on those motions is pending;

WHEREAS, Defendant A2IM is a national nonprofit professional trade association composed of hundreds of independent record labels, with its principal place of business located at 853 Broadway, Suite 1406, New York, New York 10003;

WHEREAS Defendant A2IM, by and through its respective attorneys, has consented to the entry of this Stipulation and Settlement without trial or adjudication of any issue of fact or law, and this Stipulation and Settlement shall not be evidence against or an admission by any

party regarding any issue of fact or law or except with respect to any proceeding commenced to enforce any provision of this Stipulation and Settlement;

WHEREAS Defendant A2IM expressly disclaims any liability or wrongdoing of any kind, and is entering into this Stipulation and Settlement solely to avoid additional expenses of litigation and without admitting or acknowledging any liability whatsoever;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is AGREED:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of, and each of the parties to, this action.

Venue is proper before this Court under the provisions 15 U.S.C. § 22 and 28 U.S.C. § 1391 because Defendant A2IM has resided in, transacted business in, or was found in this District, and because a substantial part of the events giving rise to the violations alleged in the Complaint occurred in this District, and a substantial portion of the affected interstate trade and commerce described in the Complaint was carried out in this District.

II. APPLICABILITY

This Stipulation and Settlement applies to the Defendant A2IM, to the officers, directors, legal agents, employees, successors, and assigns of Defendant A2IM, and to all other persons in active concert or participation with any of them who receive actual notice of this Stipulation and Settlement by personal service or otherwise.

III. FUTURE PERMITTED AND PROHIBITED CONDUCT

- A. Consistent with its First Amendment Rights, A2IM shall be free to express its opinions about Sirius XM and any proposals or terms for licensing with Sirius

XM, to make recommendations on such issues, to advocate for or against such issues, and express agreement or disagreement with the opinions of others concerning such issues.

- B. A2IM shall not sanction or benefit any member or third party based upon whether such member or third party makes or does not make licensing arrangements with Sirius XM or for expressing any opinion endorsing or not endorsing any such licensing.
- C. Nothing in this Agreement shall preclude A2IM from exercising any rights permitted under 17 U.S.C 114(e)(1).

IV. NOTICES

Defendant A2IM shall:

- A. Provide a copy of this Stipulation and Settlement to each director and officer at the time they take office and annually; and
- B. Provide a copy of this Stipulation and Settlement to each member of A2IM, and shall make a copy available on Defendant A2IM's websites.

V. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Stipulation and Settlement to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Stipulation and Settlement, and to enforce compliance with its provisions.

DATED: _____, 2013

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*Counsel for Defendant
American Association of Independent Music*

APPROVED AND SO ORDERED:

Thomas P. Griesa
Hon. Thomas P. Griesa
United States District Judge

Jan. 31, 2013